

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA  
RENO, NEVADA

SCOTT KANVICK, ) 3:08-CV-00397-ECR-VPC  
Plaintiff, )  
vs. ) **ORDER**  
STATE OF NEVADA, et al., )  
Defendants. )

The Pretrial Order (#69), filed on August 11, 2010, is amended as follows:

In reviewing the Pretrial Order, it appears to the Court that the issues for trial may be substantially narrowed. In this regard, the parties may wish to consider, among other things, the fact that Plaintiff is now apparently no longer incarcerated, the issue of protected class for constitutional equal protection purposes, post deprivation remedies, the requirements for due process, and the requirements for A.D.A. relief.

**IT IS, THEREFORE, HEREBY ORDERED** that the period of time for the filing of dispositive motions is reopened for the parties for a limited period of twenty-one (21) days, from the date of the filing of this order. This includes motions to dismiss and motions for summary judgment. The respective parties will have fourteen (14) days after the filing of any such further dispositive motions by the opposing parties to respond to the same. The parties will

1 thereafter have seven (7) days within which to file reply briefs in  
2 support of their motions. We do not anticipate permitting  
3 extensions of these time limits absent extraordinary circumstances,  
4 in light of the trial date which has been set by the Pretrial Order  
5 and which is fast approaching.

6 The parties should not anticipate being permitted to use  
7 motions in limine in lieu of motions to dismiss or motions for  
8 summary judgment. Such is an inappropriate use of motions in  
9 limine practice.

10 **IT IS FURTHER ORDERED** within twenty-one (21) days, from the  
11 date of the filing of this order, each of the parties shall file a  
12 specific list of the exhibits to be offered at trial. This must be  
13 on an item-by-item basis for each specific item. Exhibits may not  
14 be referred to, for example, as "All Renown Medical Records," "All  
15 prior exhibits submitted to Defendants by Plaintiff," "All  
16 discovery responses and documents produced in this litigation,"  
17 "Kanvick's institutional files to be further identified at trial,"  
18 etc.

19 Within fourteen (14) days after the opposing party has filed  
20 the required specific list of exhibits, the parties respectively  
21 shall file their objections to the exhibits to be offered by the  
22 opposing party. The objections shall be specific as to the basis,  
23 and not be stated in merely general terms such as, for example,  
24 "hearsay" or "violation of Rule 402," etc.

25 The admission of exhibits for trial is referred to the  
26 Magistrate Judge for purposes of ruling on their admissibility for  
27 trial to the extent this can reasonably and feasibly be done  
28 pretrial.

1        **IT IS FURTHER ORDERED** within twenty-one (21) days from the  
2 date of the filing of this order, Defendants shall file a  
3 designation setting forth by page and line number the portions of  
4 Plaintiff's deposition which may be offered in evidence at trial by  
5 Defendants. This order shall not apply to the use of Plaintiff's  
6 deposition by Defendants for impeachment purposes. Within fourteen  
7 (14) days after Defendants have filed the designation of the  
8 portions of Plaintiff's deposition which they wish to offer at  
9 trial, Plaintiff shall file his objections (in reasonable detail)  
10 as to each such designation of the deposition. At this time it  
11 does not appear under the Rules that Plaintiff may offer his own  
12 deposition in evidence at trial, except in reference to  
13 designations made by Defendants.

14        **IT IS FURTHER ORDERED** within twenty-one (21) days, from the  
15 date of the filing of this order, Defendants shall file a  
16 supplemental witness list specifying the specific name of each  
17 witness to be called by Defendants at trial to the extent they are  
18 not presently referred to by name in the witness list in the  
19 Pretrial Order. Such designation may not be in terms such as, "the  
20 person most knowledgeable" or "custodian of records," but must be  
21 by name.

22        The proposed witness lists, as set forth in the Pretrial  
23 Order, and as supplemented, are referred to the Magistrate Judge  
24 for consideration and decision as to which of such witnesses shall  
25 be allowed to testify at trial, and which, if any, not. The  
26 Magistrate Judge will consider whether the testimony of the  
27 proposed witnesses would be relevant to issues in the case for  
28

1 trial, and whether any such testimony would be duplicative or  
2 unreasonably cumulative.

3 The Magistrate Judge is authorized to require written or oral  
4 offers of proof as to the testimony to be offered by each such  
5 witness. The witness lists will not be subject to further  
6 amendment except upon motion granted by the Court.

7 The Magistrate Judge shall determine whether those witnesses  
8 listed by Plaintiff, other than the named Defendants, who are  
9 identified as associated with N.D.O.C. or the State of Nevada, will  
10 appear at trial voluntarily or whether any such witnesses must be  
11 subpoenaed by Plaintiff to appear at trial in his case by service  
12 of a subpoena together with the tender of the required witness fee  
13 and travel allowance from the respective places of residence to the  
14 courthouse in Reno, Nevada.

15 The Magistrate Judge shall also determine whether N.D.O.C. or  
16 Defendants will voluntarily produce Plaintiff's proposed inmate  
17 witnesses, whether such witnesses' presence may be obtained by  
18 habeas corpus ad testificandum, or whether arrangements may be made  
19 for such witnesses to testify at trial by closed circuit television  
20 or like means.

21 **IT IS FURTHER ORDERED** the Magistrate Judge shall at an  
22 appropriate time hold a pretrial status/settlement conference for  
23 the case.

24 The Magistrate Judge is authorized to modify the Pretrial  
25 Order upon consideration of these or other appropriate matters, and  
26 to make all rulings thereon which reasonably can be made.

27 The Magistrate Judge will substantially assist the Court in  
28 the processing of this case by undertaking the foregoing

1 proceedings. By going through the items of evidence and  
2 considering the respective witnesses' testimony, frequently the  
3 parties and/or the Court will reasonably, readily, recognize  
4 evidence which is inadmissible, or should be withdrawn, or which,  
5 upon proper available foundation, will be obviously admissible, or  
6 on the other hand, where ruling should be withheld until trial.  
7 The Magistrate Judge will have the benefit of the Pretrial Order  
8 and the arguments of counsel to assist in making these rulings.

9 Obviously, the conduct of the trial will be greatly expedited  
10 by the Magistrate Judge undertaking this assignment.

11 The rulings of the Magistrate Judge will be subject to appeal  
12 to this Judge, if timely appeal is filed. The Magistrate Judge has  
13 extensive experience in resolving such matters, both as an attorney  
14 in practice, and sitting on the bench as a trial judge, and is well  
15 qualified to undertake such rulings.

16 We realize this order places a considerable burden on the  
17 Magistrate Judge. We trust, however, that the Magistrate Judge  
18 will not be inclined to ignore this order, but if the Magistrate  
19 Judge would prefer not to undertake this reference, or feels  
20 uncomfortable in doing so, or feels such an order is inappropriate  
21 in the circumstances, we should be so advised so that we can  
22 undertake to arrange other procedures to accomplish the goals we  
23 seek to achieve in entering this order.

24 Dated: This 17th day of August, 2010.

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28 UNITED STATES DISTRICT JUDGE